

STATE OF MICHIGAN
COURT OF APPEALS

LAW OFFICES OF ANTHONY J. SZILAGYI,
PLLC,

UNPUBLISHED
October 21, 2014

Plaintiff-Appellee,

v

DANIEL R. HOLCOMB,

No. 317152
Ingham Circuit Court
LC No. 13-000366-CH

Defendant-Appellant.

Before: SAAD, P.J., and O'CONNELL and MURRAY, JJ.

PER CURIAM.

Defendant appeals as of right from an order of the circuit court quieting title in plaintiff to a house defendant had put forward as security toward the payment of a default judgment. We affirm.

In 2005, a district court awarded plaintiff a default judgment against defendant for unpaid legal fees. Four months later, the parties entered into an installment payment agreement, with defendant agreeing to pay \$350 per month until the judgment was paid and executing a security agreement granting plaintiff an interest in, among other things, his personal and real property. When defendant filed for bankruptcy in 2007, plaintiff filed a motion for relief from an automatic stay in order to pursue enforcement of his security interest. In 2008, following the grant of relief from the bankruptcy court, plaintiff initiated an action in circuit court for claim and delivery on the security agreement, and the court entered a judgment that allowed plaintiff to foreclose on his security interest. The real property in issue was ultimately seized and sold to plaintiff at a sheriff's sale on December 13, 2013. A notice of abandonment was issued four days after the sale.

According to plaintiff, defendant thereafter entered and began to occupy the house. Plaintiff filed suit to recover the premises, and a hearing was set for February 14, 2013. Defendant attended the hearing, the parties reached a tentative agreement, and the case was adjourned and subsequently dismissed. Five weeks later, plaintiff filed a new eviction suit against defendant, the hearing was scheduled for April 3, 2013, and a summons and complaint was mailed to defendant on March 22, 2013. Defendant failed to attend the hearing and a default judgment granting plaintiff the right to possession was entered. Eight days later, defendant filed

a motion to set aside the default judgment of eviction, stating that he was not served. The court denied the motion.

Meanwhile, with the district court's default judgment awarding him possession of the premises in hand, plaintiff filed a complaint in circuit court to quiet title. The summons and complaint were issued on the same day. When defendant failed to respond within the time period allowed for a reply, plaintiff requested a default judgment, which was entered. Plaintiff then filed a motion for entry of a default judgment and a hearing date was set for May 29, 2013. The court clerk served both the motion and hearing notice on defendant by mail. In the order issued May 29, 2013, the court quieted title to the property in plaintiff, granted him legal and equitable title in fee simple absolute, and determined that defendant's right of redemption had expired. A subsequent motion by defendant to set aside the default judgment quieting title in plaintiff was denied.

Defendant now argues that the circuit court erred in denying his motion to set aside the default judgment quieting title. We review the court's decision for an abuse of discretion. *Huntington Nat'l Bank v Ristich*, 292 Mich App 376, 383; 808 NW2d 511 (2011). A trial court has not abused its discretion if its decision results in an outcome within the range of principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). Unless there has been a clear abuse of discretion, a default judgment will not be set aside. *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 227; 600 NW2d 638 (1999).

To have a default judgment set aside, a party must show good cause and file an affidavit of facts showing a meritorious defense. MCR 2.603(D)(1). Good cause may be shown by establishing: "(1) a substantial defect or irregularity in the proceedings upon which the default was based, (2) a reasonable excuse for failure to comply with the requirements which created the default, or (3) some other reason showing that manifest injustice would result from permitting the default to stand." *Shawl v Spence Bros, Inc*, 280 Mich App 213, 221; 760 NW2d 674 (2008) (citations omitted). The failure to give the required notice of entry of default or default judgment is good cause. *Bradley v Fulgham*, 200 Mich App 156, 158-159; 503 NW2d 714 (1993). "[M]anifest injustice is the result that would occur if a default were to be allowed to stand where a party has satisfied the 'meritorious defense' and 'good cause' requirements of the court rule." *Alken-Ziegler*, 461 Mich at 233.

Factors relevant to the existence of a meritorious defense include whether there is evidence that "(1) the plaintiff cannot prove or the defendant can disprove an element of the claim or a statutory requirement; (2) a certain ground for summary disposition exists MCR 2.116(C)(2), (3), (5), (6), (7), (8); or (3) the plaintiff's claim rests on evidence that is inadmissible." *Shawl*, 280 Mich App at 238. An affidavit of meritorious defense need not be filed when the basis for moving to set aside a default is grounded in failure of proper notice of the request for a default judgment. *Perry v Perry*, 176 Mich App 762, 769-770; 440 NW2d 93 (1989), overruled on other grounds *Draggool v Draggool*, 223 Mich App 415; 566 NW2d 642 (1997). A default judgment may also be set aside on the grounds of fraud, misrepresentation, or other misconduct of an adverse party. MCR 2.612(C)(1)(c).

The essence of defendant's argument is that the circuit court's default judgment quieting title in plaintiff should have been set aside because it is based on a default judgment from the

district court awarding possession to plaintiff. Indeed, defendant presented to the circuit court evidence pertaining to good cause and a meritorious defense for setting aside the default judgment of the district court, not for setting aside the default judgment of the circuit court. However, defendant cannot present a collateral attack on the final district court default judgment that he had not previously appealed to the circuit court. See *Leahy v Orion Twp*, 269 Mich App 527, 530; 711 NW2d 438 (2006) and *Kosch v Kosch*, 233 Mich App 346, 353; 592 NW2d 434 (1999). Thus, the circuit court did not abuse its discretion in denying defendant's motion to set aside the default judgment.

The second issue—whether the district court abused its discretion in denying its motion for reconsideration—fails for a similar reason. MCL 600.8342(3) provides that “[a]ll appeals to the court of appeals from judgments entered by the circuit court or the recorder’s court on appeals from the district court shall be by application.” After he filed his claim of appeal with this Court, and prior to filing his appellate brief, defendant sought and was denied appeal in the circuit court of the district court’s denial of his motion for reconsideration. To have this issue properly before this Court, defendant needed to file an application for leave to appeal. MCR 7.203(B). Failing that, this Court does not have jurisdiction to consider the matter.

Affirmed.

/s/ Henry William Saad
/s/ Peter D. O’Connell
/s/ Christopher M. Murray